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No. 92-1424

In The

Supreme Court of the United States

October Term, 1992

CALIFORNIA FORESTRY ASSOCIATION,

Petitioner,

v.

SALMON RIVER CONCERNED CITIZENS, CALIFORNIA COALITION FOR ALTERNATIVES TO PESTICIDES, INC., SAFE ALTERNATIVES FOR OUR FOREST ENVIRONMENT, INC., NORTHCOAST ENVIRONMENTAL CENTER, INC.,

DALE ROBERTSON, CHIEF, UNITED STATES FOREST SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Should the Court review the Ninth Circuit's determination that the California Forestry Association (CFA) does not have an interest sufficient to intervene as a defendant in a suit seeking to compel a federal agency to comply with its obligations under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321-4370b?

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

This case involves a challenge by several environmental organizations to an Environmental Impact Statement (EIS) prepared by Region V of the United States Forest Service (essentially all national forests in California), pursuant to the National Environmental Policy Act

(NEPA), 42 U.S.C. §§ 4321-4370b. Plaintiffs allege that the Forest Service failed to adequately consider the environmental impacts of a proposal to use chemical herbicides on national forests in Region V.

Petitioner California Forestry Association (hereinafter CFA or Petitioner) sought to intervene as a defendant pursuant to Federal Rule of Civil Procedure 24. The district court denied Petitioner's motion to intervene, but allowed Petitioner to participate in the briefing as amicus curiae. Petitioner appealed the denial of intervention to the Ninth Circuit, which affirmed the district court.[1] Petitioner then filed for a Writ of Certiorari in this Court.

SUMMARY OF THE ARGUMENT

This Court and the circuits of the United States Court of Appeals agree that an applicant for intervention as of right under FRCP 24(a) must show a legally protectable interest that will be affected by the litigation before intervention as of right will be allowed. Petitioner failed to make such a showing in this case, and the district court and Ninth Circuit properly denied intervention.

The purpose of FRCP 24(a) is to achieve judicial economy by allowing related issues to be resolved in a single lawsuit. Since Petitioner does not seek to protect a legally recognized interest under NEPA, and since there

[1] While the appeal of the denial of intervention was pending, the district court ruled in favor of defendant Forest Service on the merits. Plaintiffs appealed that ruling. The appeal has been briefed but not argued.

are no other issues related to this case that Petitioner might raise in a subsequent lawsuit, allowing intervention would needlessly impose additional burdens on the court and parties in this case – a result contrary to the purpose of FRCP 24(a).

REASONS FOR DENYING THE WRIT OF CERTIORARI

The Petitioner's request for a Writ of Certiorari should be denied because nothing about the case makes review by this Court appropriate. There is neither disagreement among the circuits nor disagreement between the circuits and this Court with respect to the appropriate test for intervention as of right under FRCP 24(a). Nothing in the opinions of the district court or the Ninth Circuit decides any important question of federal law that would warrant review by this Court.

I. THE NINTH CIRCUIT CORRECTLY AFFIRMED THE DISTRICT COURT'S DENIAL OF PETITIONER'S MOTION FOR INTERVENTION OF RIGHT UNDER FRCP 24(a)(2)

The Ninth Circuit correctly affirmed the district court's denial of Petitioner's motion to intervene as of right under FRCP 24(a) in this case. FRCP 24(a)(2) provides that a party may intervene as of right in pending litigation if it is able to show "an interest relating to the property or transaction which is the subject of the action and [it] is so situated that the disposition of the action may as a practical matter impair or impede [its] ability to

protect that interest, unless the . . . interest is adequately represented by existing parties."

There is no conflict among the circuits of the United States Court of Appeals concerning the availability of intervention of right under FRCP 24(a)(2) in actions brought to enforce federal agency compliance with NEPA. The circuits, including the Ninth Circuit in this case, are correctly applying the standard set by this Court in *Donaldson v. United States*, 400 U.S. 517 (1971) and followed in *Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310 (1985) and *Diamond v. Charles*, 476 U.S. 54 (1986). Both the district court and Ninth Circuit properly applied this standard to determine that Petitioner failed to demonstrate a legally protectable "interest relating to the property or transaction" in this case. No circuit has allowed intervention of right under FRCP 24(a)(2) to a party seeking to intervene in support of a federal agency in a NEPA action in the absence of threatened contract or license. Petitioner has no such contract or license in this action.

A. The Circuits are Correctly Applying the Standard Set by This Court Concerning Intervention of Right Under FRCP 24(a)(2)

Petitioner claims that this Court has "given very little guidance to date on how interest is to be defined," and asserts that the Court has given "at best, only partial and mixed guidance as to what sort of interest qualifies under Rule 24(a)(2)." Petitioner's Brief at 9-10. Petitioner is simply wrong. The Court has provided clear, unambiguous guidance that has been applied consistently by the circuits.

In *Donaldson v. United States*, 400 U.S. 517, 531 (1971), the Court stated that an employee's asserted interest in an IRS proceeding with an employer was

> nothing more than a desire by the [applicant]. . . . This interest cannot be the kind contemplated by Rule 24(a)(2) when it speaks in general terms of 'an interest relating to the property or transaction which is the subject of the action.' What is obviously meant there is a significantly protectable interest.[2]

In *Diamond v. Charles*, 476 U.S. 54, 75 (1986), the Court explained that

> *Donaldson's* requirement of a "significantly protectable interest" calls for a direct and concrete interest *that is accorded some degree of legal protection. See Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 315 (1985) (noting that *Donaldson* "held that the employee's interest was not *legally protectable* and affirmed the denial of the employee's motions for intervention.")

(emphasis added).[3]

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[2] In *Donaldson*, the IRS had issued to an employer a summons under 26 U.S.C § 7602, seeking records prepared by the employer that would be relevant to an investigation of the tax liability of an employee. The employee sought intervention under FRCP 24(a)(2) in order to oppose enforcement.

[3] In *Diamond*, a doctor, who had a general desire to defend a state statute imposing criminal liability for the performance of an abortion under certain circumstances, was denied intervention by this Court because he lacked any "judicially cognizable interest in the statute's defense" and "the abstract interests advanced by Diamond . . . f[e]ll well outside the ambit of Rule 24(a)(2)." 476 U.S. at 65, 75.

The mere possibility that a lawsuit might have an impact on some interest of an applicant for intervention is insufficient to compel intervention as of right. Rather, in *Donaldson*, *Tiffany*, and *Diamond*, this Court clearly stated that a party will meet the "interest" test for intervention of right under Rule 24(a)(2) only when a legally protectable interest is affected. Petitioner has failed to demonstrate a legally protectable interest in this litigation. As we explain in part II of this brief, *infra*, Petitioner's allegations of generalized economic harm do not bring it within the zone of interests protected by NEPA. Its allegations of environmental interest are actually based on its economic interests, and in any event are not connected with the relief it seeks. And its members have no existing contract or license agreement that would be affected by the case. The Ninth Circuit applied *Donaldson* correctly in determining that Petitioner failed to allege a legally protectable interest that would support intervention.

B. There is No Conflict Between the Circuits Concerning the Availability of Intervention of Right Under FRCP 24(a)(2) in Actions Brought to Enforce Federal Agency Compliance With NEPA

Petitioner claims that decisions of the Seventh and Ninth Circuits (including the decision of the Ninth Circuit in this case) "are in direct conflict" with a decision of the Tenth Circuit. Petitioner's Brief at 7. Petitioner also claims that there is a conflict between opinions of various panels within the Ninth Circuit. *Id*. There is no such conflict however, either between circuits or within the Ninth Circuit.

Petitioner argues that in *Portland Audubon Society v. Hodel*, 866 F.2d 302 (9th Cir. 1989), in the instant case, and in *Wade v. Goldschmidt*, 673 F.2d 182 (7th Cir. 1982), the Ninth and Seventh Circuits "have held that economic interests alone, however substantial they may be, can never satisfy the interest requirement necessary to qualify for intervention of right under FRCP 24(a)(2)." Petitioner's Brief at 8. Petitioner then argues that in *Natural Resources Defense Council v. U.S. Nuclear Regulatory Comm'n*, 578 F.2d 1341 (10th Cir. 1978) and *County of Fresno v. Andrus*, 622 F.2d 436 (9th Cir. 1980), the Tenth and Ninth Circuits have "permitted intervention of right under Rule 24(a)(2) to business entities claiming only economic interests." Petitioner's Brief at 8. But in *Natural Resources Defense Council*, the applicants for intervention had legally protectable interests – licenses to mine uranium – that were threatened by the challenged proceeding. *No* circuit has granted a party asserting abstract economic interests intervention of right as a defendant in an action seeking to compel a federal agency to comply with NEPA in the *absence* of a threat to a contractual or legally protectable right.[4]

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[4] Petitioner argues that the Ninth Circuit's opinion in *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980), is in conflict with the Ninth Circuit opinion in *Portland Audubon Society v. Hodel*, 866 F.2d 302 (9th Cir. 1989) and in the instant case. *See* Petitioner's brief at 7. This Court, however, does not sit to review purported conflicts between different panels of a single circuit. *En banc* review is the appropriate remedy for claims of intra-circuit conflicts.

The Ninth Circuit in *Portland Audubon Society v. Hodel, supra,* required applicants for intervention to demonstrate that litigation in which applicants seek to intervene will "affect a statute or regulation governing applicant's interest" or will "directly alter *contractual* or other *legally protectable rights* of the proposed intervenors." *Portland Audubon,* 866 F.2d at 309 (emphasis added). *See also Westlands Water District v. United States,* 700 F.2d 561, 563 (9th Cir. 1983) (intervenors must identify a "legally protectable interest"). This correctly applies this Court's opinions in *Donaldson, Tiffany,* and *Diamond, supra.* The Ninth Circuit also recognized that in NEPA cases:

> [T]he only focus that the ongoing litigation- . . . can have is whether the governmental bodies charged with compliance, defendants, have satisfied the federal administrative decisions regarding the construction which would directly affect plaintiff's property. In a suit such as this, brought to require compliance with federal statutes regulating governmental projects, the governmental bodies charged with compliance can be the only defendants. As to the determination involved in this suit, all other entities have no right to intervene as defendants.

Portland Audubon, 866 F.2d at 309 (quoting *Wade v. Goldschmidt,* 673 F.2d 182, 184-85 (7th Cir. 1982)). *Portland* did not involve a proposed intervenors' contractual or license rights, and the instant case does not involve such rights.

The Seventh Circuit is also correctly applying this Court's intervention jurisprudence. In *Wade v. Goldschmidt, supra,* the Seventh Circuit denied applicant's

attempts to intervene as a defendant in a NEPA case because "[t]he holding in the instant case will not affect a statute or regulation governing the applicants' actions, nor will it directly alter contractual or other legally protectable rights of the proposed intervenor." *Wade*, 673 F.2d at 186, n. 6.[5]

Petitioner argues that the Tenth Circuit's grant of intervention in *Natural Resource Defense Council v. United States*, 578 F.2d 1341 (10th Cir. 1978) conflicts with the opinions in *Portland Audubon*, *Wade*, and the instant case. In *NRDC*, plaintiff sought to enjoin the Nuclear Regulatory Commission from issuing a license to operate a uranium mill. The court granted a motion by other license applicants and potential applicants to intervene, finding "that the interests of movants in the subject matter is sufficient to satisfy the requirements of Rule 24(a)(2) and that the threat of loss of their interest and inability to participate is of such magnitude as to impair their ability to advance their interest." 578 F.2d at 1343. The Tenth Circuit stated in *NRDC* that "[a] decision in favor of the plaintiffs, which is not unlikely, could have a profound effect on [applicant]. Hence, [applicant] does have an interest within the meaning of Rule 24(a)(2)." 578

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[5] *See also United States v. 39.96 Acres of Land*, 754 F.2d 855 (7th Cir. 1985), *cert denied*, 476 U.S. 1108 (1986) (citizens' group sought to intervene in a condemnation action – brought pursuant to the Indian Dunes National Lakeshore Act – court found that the statute did not create a legally protectable interest in the applicant, and therefore denied intervention). *Id.* 754 F.2d at 858.

F.2d at 1344. Although not emphasized in the court's opinion, the "interest" that would have been affected was the ability to obtain licenses to develop mining claims – a legally protectable interest. No such interest is involved in the instant case, or in the other cases relied upon by Petitioner to show a "conflict" among the circuits.

II. INTERVENTION IN THIS CASE WOULD BE INCONSISTENT WITH THE POLICIES BEHIND FEDERAL RULE OF CIVIL PROCEDURE 24 (a)(2)

FRCP 24 is primarily concerned with the efficient allocation of scarce judicial resources.[6] As the First Circuit stated in *Pujol v. Shearson/American Express Inc.*, 877 F.2d 132, 134 (1st Cir. 1989), FRCP 24 aims "to achieve judicial economies of scale by resolving related issues in a single lawsuit," while at the same time preventing "the single lawsuit from becoming fruitlessly complex or unending." (quoting *Smuck v. Hobson*, 408 F.2d 175, 179

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[6] The current FRCP 24(a)(2) is a product of the amendments of 1966. According to the Notes of the Advisory Committee, the rationale behind FRCP 24(a)(2) coincides with the rationale behind FRCP 19 (joinder), also amended in 1966. The Notes of the Advisory Committee indicate that after 1966, FRCP 19 implicates a theretofore unarticulated interest: "that of the public in avoiding repeated lawsuits on the same essential subject matter." 28 U.S.C. app. – Rules of Civil Procedure, Rule 24 (Notes of Advisory Committee on Rules – 1966 Amendments). The Fifth Circuit recognized this interplay in *Atlantis Development Corporation v. United States*, 379 F.2d 818, 825 (5th Cir. 1967), noting the "deliberate efforts to dovetail FRCP 19, 24, and 23 together. . . ."

(D.C. Cir. 1969)). *See also* Friedenthal, Kane & Miller, *Civil Procedure* 336 (1985) ("The basic objective underlying all claim and party joinder rules is rendering complete justice with as little litigation as possible."). Granting Petitioner intervention as a defendant on the side of the government in this NEPA case would undermine the purposes of FRCP 24. Intervention would not promote judicial economy because Petitioner asserts no rights or obligations under NEPA that could be litigated in a subsequent or concurrent lawsuit. And allowing Petitioner to intervene, with full rights to conduct discovery, initiate motions, cross-examine witnesses, and participate in oral argument, would multiply the time and resources necessary to resolve the case, with no corresponding benefits.

A. Granting Intervention To A Party Unable To Maintain Its Own Claim Would Not Promote Judicial Economy

Petitioner contends that if its petition for intervention is denied, it "will be compelled to bring an action of [its] own at a later date" to defend its interests. Petitioner's brief at 17. Petitioner does not elaborate, however, on who it would sue, or what the action would involve. It is difficult to imagine why an applicant for intervention to *defend* an EIS would later initiate its own NEPA suit to challenge the same EIS.[8] Petitioner could not sue the

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[8] Although some NEPA cases have involved intervenor-defendants, in those cases intervention apparently was not contested. *See Lujan v National Wildlife Federation*, 497 U.S. 871 (1990) (plaintiff did not have standing under NEPA.); *Kleppe v. Sierra Club*, 427 U.S. 390 (1976) (issue in contention was not an

Forest Service over the EIS at issue in this case even if it wanted to, because Petitioner asserts no interest that is within the zone of interests protected by NEPA. And Petitioner cannot sue *plaintiffs*, because plaintiffs did not write the EIS and have no affirmative obligations under NEPA. Allowing Petitioner to intervene would therefore increase, rather than decrease, the total judicial resources necessary to resolve the issues in this case.

Petitioner will not "bring an action of its own" to challenge the EIS at issue in this case, because it seeks to *defend* the EIS. *See* Petitioner's brief at 4. Petitioner has never suggested that the Forest Service is guilty of illegal conduct. Intervention as a defendant cannot reduce potential future lawsuits if the only *potential* defendant in any future suit challenging the EIS (in this case the Forest Service) is already named as a defendant.[9]

"agency action" subject to NEPA.); *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669 (1973) and *Flint Ridge Development Co. v. Scenic Rivers Association of Oklahoma*, 426 U.S. 776 (1976), *reh. den.* 429 U.S. 875 (1976) (NEPA superseded by another statute); *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223 (1980) and *Kleppe v. Sierra Club*, 427 U.S. 390 (1976) (court would not interfere with discretionary agency action).

[9] If Petitioner's threat of a future lawsuit envisions suing *plaintiffs*, Petitioner should at least be required to reveal the basis of such a suit. Since NEPA is directed only at federal agencies, and not the private sector, Petitioner could not sue plaintiffs for violating NEPA. And although Petitioner alleges potential injury stemming from the injunction which plaintiffs seek in this lawsuit, an order directing an agency to comply with the law can hardly be a basis for a claim against the party who obtained the order.

1. Petitioner Lacks Standing To Initiate Its Own NEPA Suit

Even if Petitioner wanted to challenge the EIS that it seeks to defend in this case, it would not have standing to initiate such a lawsuit, because the abstract economic interests it asserts are not within the scope of interests protected by NEPA.[9] *See Port of Astoria v. Hodel*, 595 F.2d 467, 475 (9th Cir. 1979) (strictly financial losses "are outside of NEPA's zone of interests and are not sufficient to establish standing"); *Churchill Truck Lines, Inc. v. United States*, 533 F.2d 411, 416 (8th Cir. 1976) (common carriers lacked standing to raise NEPA challenge to permit issued by ICC to competing carrier); *Cross-Sound Ferry Services, Inc. v. Interstate Commerce Commission*, 934 F.2d 327, 339 (D.C. Cir. 1991) (injury to party's "fiscal health" was

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[9] In *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-51 (1989), this Court stated that NEPA

> ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; [it] also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision making process and the implementation of that process. . . . Although these procedures are almost certain to affect the agencies substantive decision, it is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.

The only remedy available under NEPA, therefore, is to compel agency compliance through the preparation of an adequate EIS. Petitioner does not claim that a new EIS is required.

insufficient for NEPA standing) (Thomas, J., concurring, citing *Churchill*).[10]

This Court discussed the importance of independent standing for intervenors in a related context in *Diamond v. Charles*, 476 U.S. 54, 68-69 (1986). In *Diamond*, a unanimous Court refused to allow a party lacking standing to pursue an appeal as an intervenor:

> [S]tatus as an intervenor below . . . does not confer standing sufficient to keep the case alive in the absence of [a party with standing] on this appeal. Although intervenors are considered parties entitled, among other things, to seek review by this Court . . . , an intervenor's right to continue a suit in the absence of the party on whose side intervention was permitted is contingent upon a showing by the intervenor that [it] fulfills the requirements of Article III.

Id. at 68. Although it is not clear whether the standing of intervenors was addressed below in *Diamond*, once the intervenors became the sole parties, the Court plainly

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[10] Petitioner also asserts that it has non-economic interests in the use of the forest for enjoyment and recreation, and that these interests support intervention. Petitioner does not explain, however, how these interests are threatened by this litigation or how those interests would be furthered by intervening as a defendant. Plaintiffs seek compliance with NEPA, a result that is consistent with, not adverse to, the interests asserted by Petitioner. In any event, the district court correctly found that Petitioner's purported non-economic interests are "intertwined with [Petitioner's] economic interests," and "further [Petitioner's] broader goal of ensuring a stable and continuing supply of timber for its timber-dependent member communities." Petition for Certiorari, Appendix B, at 7a.

required that the intervenors show an interest sufficient to support standing before being allowed to proceed.

A number of circuits have found, consistent with *Diamond*, that applicants for intervention must demonstrate independent standing or at least some right to maintain a claim of their own. In *Cook v. Boorstin*, 763 F.2d 1462, 1470 (D.C. Cir. 1985), for example, the court stated that "an intervenor of right, just like an ordinary plaintiff, must have standing." *See also Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir. 1985) (intervenor must be able to maintain a claim for relief sought); *Solien v. Miscellaneous Drivers & Helpers Union, Local No. 610*, 440 F.2d 124, 132 (8th Cir. 1971), *cert. denied.*, 403 U.S. 905 (1971) (intervention presupposes a right to maintain a claim).

Since Petitioner's lack of standing precludes it from bringing a subsequent or concurrent lawsuit based on this EIS, allowing Petitioner to intervene would contravene FRCP 24(a)(2)'s goal of conserving judicial resources by consolidating potential litigation involving the same issues.

2. Petitioner's Alleged Non-NEPA Interests Are Not Legally Protectable In This Litigation

Petitioner argues that even if its interests are not protected by NEPA, its "interests are unquestionably among those which Congress sought to protect in enacting [the National Forest Management Act (NFMA), 16 U.S.C. § 1601 et seq., the Multiple Use Sustained Yield Act, 16 U.S.C. §§ 528-31, and the Forest Service's Organic Act, 16 U.S.C. § 475.]" Petitioner's Brief at 23, and that its

"property or transaction" interest is an interest in "actual utilization of forest resources." Petitioner's brief at 16.

Petitioner consists of approximately 82 forest products companies who depend upon timber from the national forests in California. Petitioner's president Mr. Dennison stated:

> Among the specific purposes set forth in the current By-Laws of the California Forestry Association, are: "to promote adequate and effective protection of all forest lands of the State of California from wildfire, from insects, pests and diseases affecting timber, and from significant amount [sic] accelerated erosion, and to promote effective management of the growing and harvesting of a perpetual crop of timber for all timber lands of the State of California," "to collect and disseminate information to members on matters pertaining to the purchase of public timber," "to resolve regulatory problems affecting the wood products industry of California, and to foster the management of public forests for maximum net public benefit."

ER at 13.[12] Petition for Certiorari, Appendix A, at 4a; Appendix B at 7a. Petitioner undoubtedly has an interest

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[12] Petitioner claims the injunction sought by plaintiffs would effectuate a "total ban on the use of herbicides." Declaration of William N. Dennison, ER at 16-17. As a factual matter Plaintiffs are not asking for a ban on the use of herbicides; such a substantive remedy is not available under NEPA. Plaintiffs seek only to compel the Forest Service to comply with the procedural requirements of NEPA. And no interest of Petitioner under *NEPA* would be affected by an order directing preparation of a better EIS. NEPA does not create a cause of action against a government agency because it was overzealous in

in the "actual utilization of forest resources," and it *may* even be that those interests are protected by one or more statutes. But the only statute at issue in this case is NEPA, and the only question in this case is whether the Forest Service complied with NEPA, Petitioner must demonstrate an interest "relating to . . . the subject of the action." FRCP 24(a). Petitioner's interests under other statutes, and in the "utilization of forest resources," are not related to *this* action.

B. Allowing Petitioner to Intervene of Right Would Increase the Complexity of This Action, With No Corresponding Benefit

If Petitioner were allowed to intervene it would have full rights to conduct discovery, file motions, cross-examine witnesses, and generally increase the workload of the court and existing parties. Petitioner's briefing of extraneous statutes not at issue in this case illustrates how additional parties inevitably multiply the resources necessary to decide a case. As the Ninth Circuit noted, Petitioner's interest in the proper interpretation of NEPA supports intervention as of right, FRCP 24(a) would allow virtually anyone to intervene in virtually any NEPA action.[12] Petition for Certiorari, Appendix A, at 3a. *See*

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studying the potential environmental consequences of a proposed project. NEPA's purpose is to compel, not to limit, the study of environmental consequences.

[12] According to the EIS, 380 contributors submitted comments on the draft EIS. CR item 17 (administrative record, part 3 of 3 (EIS)); EIS Volume IV-Appendix 1. If Petitioner were allowed to use its "prior involvement in the development of the

e.g., State ex rel. Van de Kamp v. Tahoe Regional Planning Agency, 792 F.2d 779, 781-82 (9th Cir. 1986) ("[T]o the extent the [proposed intervenor] had an interest in water exportation, it was a general interest . . . shared by a substantial portion of the population of Northern California, rather than an interest in the . . . subject litigation. They accordingly had no right to intervene.") (quoting *Westlands Water District, supra*, 700 F.2d at 563). *See also Dilks v. Aloha Airlines, Inc.*, 642 F.2d 1155, 1157 (9th Cir. 1981) ("general concern" for the "proper interpretation" of laws not sufficient to support intervention). Such a result is inconsistent with FRCP 24(a)'s goal of conserving scarce judicial resources.

VMR policy" as a bootstrap to create an interest in the litigation, there is no logical reason why the other 379 contributors should not be granted intervention on that basis as well.

CONCLUSION

Nothing about this case warrants a Writ of Certiorari. There is no conflict among the circuits, and the order denying intervention but allowing participation as amicus parties raises no significant issues of federal law. Petitioner's request for Writ of Certiorari should be denied.

Respectfully submitted,

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